

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

\_\_\_\_\_ )  
In the Matter of )

\_\_\_\_\_ )  
Petition for Declaratory Ruling of )  
Continental Airlines, Inc. )  
\_\_\_\_\_ )

ET Docket No. 05-247

To: The Office of Engineering and Technology

**COMMENTS OF  
TAMPA INTERNATIONAL AIRPORT  
(HILLSBOROUGH COUNTY AVIATION AUTHORITY)**

**I. INTRODUCTION**

The Hillsborough County Aviation Authority (“HCAA”) is a political subdivision, created by the Florida Legislature, which has exclusive jurisdiction, control, supervision and management of all publicly-owned airports in Hillsborough County, Florida, including Tampa International Airport and three regional airports (Peter O. Knight, Vandenberg and Plant City). Tampa International Airport (“TPA”) is ranked as the 30<sup>th</sup> busiest airport in the country. It serves over 17.5 million passengers a year and ships more than 165 million pounds of cargo per year. Over twenty airlines operate out of TPA, and TPA is home to a large number of commercial tenants including HMSHost, Marriott Hotel and a major Federal Express cargo facility.

The Office of Engineering and Technology (“OET”) has requested comments regarding a Petition for Declaratory Ruling (the “Petition”) filed by Continental Airlines, Inc. (“Continental”) in which Continental complains that certain restrictions in their lease with Massachusetts Port Authority (“Massport”) regarding the operation of a “Wi-Fi” antenna in Continental’s President’s Club lounge at Logan Airport are prohibited under the Over-the-Air Reception Devices (OTARD) rules (47 C.F.R. §1.4000(e)). The HCAA files today in support of the comments submitted by Massport and Airports Council International – North America (“ACI-NA”).

Based on the following comments and the reasons cited by ACI-NA, we urge the FCC to rule in a way that recognizes the specialized nature of an airport setting. The airport environment is unique, complex and dependent on centralized coordination, management and oversight in balancing the diverse needs of a large number of tenants while ensuring the safe and efficient transportation of passengers and freight. As ACI-NA states in its comments, after decades of experience, HCAA and other airport authorities have learned that retaining control over the airport’s physical infrastructure is a critical management tool. While some airports may not choose to exercise that control in every instance, retaining the authority to do so is essential. This is true for communications infrastructure as well as many other types of necessary facilities.

HCAA exists primarily to serve the traveling public. We are driven by their needs, one of which is the ability for passengers to have access to wireless Internet service throughout airport facilities. To meet this need, we have implemented an airport wide Wi-Fi service. Any action by OET that would impair the effective use of this service would hinder our ability to serve the traveling public.

Finally, as noted in the ACI-NA comments, there are significant legal and practical issues concerning the application of the OTARD Rule in an airport context. If OET takes a different position on those issues, then OET should either allow Massport to proceed under the “central antenna exception” or under a waiver due to the highly specialize nature of an airport .

## **II. ANY ACTION BY OET SHOULD NOT RESTRICT HCAA’S ABILITY TO PROVIDE WI-FI SERVICE.**

HCAA offers Wi-Fi service to the traveling public under a model that was carefully considered and developed, after evaluating local conditions. The service was installed at Tampa International Airport during 2005 in the main or Landside Terminal and the four (4) Airside Terminals. The service is scheduled to be installed in the tenant operational areas including ramp gate aprons by the end of 2005. There are no restrictions on the use of the service other than the acceptance of terms of use stipulating that illegal activity cannot be performed using the system. The project was funded under the HCAA’s Capital Improvement Program and is provided to both the public and tenants free of charge. The system is supported by HCAA technical employees and any support costs are recovered through rates and charges. To date, no airline or concession tenant uses the service. However, discussions regarding operational use have been held with both airlines and concession tenants. Tenant applications discussed to date include baggage reconciliation and tracking, rental car check-in, and curbside check-in. US Airways has expressed intent to use the service for members in its airline club located in Airside F. The HCAA Tenant Work Permit contains a clause requiring tenant installed antennas be removed, at the discretion of the HCAA, at such time as the HCAA offers functionality equal to

or exceeding that of a tenant's system. The HCAA has not exercised this option to date with any tenant due to the tenant system not being fully deployed.

HCAA urges OET to bear in mind that HCAA and many other airports have introduced Wi-Fi service under many different business models, each adapted to local conditions. We have tried hard to address and meet the needs of all the stakeholders at the airport and to develop an approach that works for all parties. However OET decides this case, it should not hinder the ability of airports to make specific policy choices as they attempt to perform and obtain their mandated missions to ensure the safe and efficient transportation of passengers and freight through the airport facility.

### **III. HCAA DOES NOT BELIEVE CONTINENTAL CAN USE THE OTARD RULE FOR PROTECTION**

In its comments, ACI-NA raises a number of arguments, including (i) that application of the OTARD Rule in Massport's case might implicate the takings clause of the Fifth Amendment; (ii) that only Continental, and not Continental's paying customers, are protected by the Rule; and (iii) that the Rule does not give Continental the right to transmit a signal outside its leased space. ACI-NA also notes that Continental has not proven its claim of business use of its Wi-Fi antenna and that any such use is incidental to the use by passengers. HCAA supports these arguments, and urges OET not to apply the OTARD Rule in the unique airport context.

Continental and the other airlines, as well as other airport tenants, are extremely sophisticated and knowledgeable organizations; they do not need to be protected from their landlords in the way that the OTARD Rule suggests is appropriate for individual homeowners or apartment residents.

**IV. OET SHOULD NOT HINDER THE ABILITY OF AIRPORTS TO PROTECT THE SAFETY AND SECURITY OF PASSENGERS.**

HCAA is very concerned that OET may rule in such a manner that will restrict the ability of HCAA and other airports to protect the safety and security of passengers. Massport has argued that its actions were protected under the safety exception to the OTARD Rule. It is well known that airports have clearly defined, legitimate safety objectives which require broad latitude. It is simply impractical to expect that OET and the FCC can address airport safety issues on a case-by-case basis in a timely and effective fashion. Consequently, airports should be given latitude to apply the safety exception to the OTARD Rule to address these specific and unique objectives.

**V. IF OET CONCLUDES THE RULE SHOULD APPLY, HCAA URGES OET EITHER TO APPLY THE CENTRAL ANTENNA EXCEPTION TO THE CASE OF MASSPORT, OR TO GRANT MASSPORT A WAIVER UNDER 47 C.F.R. 1.4000(d).**

If OET concludes that the Rule should apply, notwithstanding the arguments of ACI-NA to the contrary, HCAA notes that there is ample evidence to justify either the application of the central antenna exception of the Rule, or the grant of a waiver under 47 C.F.R. 1.4000(d).

Although the central antenna exception was crafted for use in the multi-family residential video context, we believe that it can and should be adapted to the airport context. Airports are not condominiums or townhouse developments. They are much more complicated environments, both in terms of their economic complexity and in terms of the many types of communications activities that take place on their premises. Antennas placed “at will” is not a practical solution. A central antenna option can solve many problems for both airport managers

and tenants. While some tenants may prefer to have their own antennas, in some cases -- depending on local conditions -- this may be an unreasonable desire in the close quarters of an airport. As discussed in the ACI-CNA comments, allowing individual users free rein can make it impossible for others -- including the airport -- to operate effectively. In that case, the airport must be allowed to manage the facility for the benefit of all.

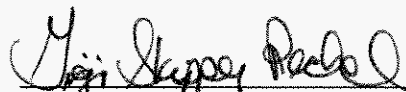
Airports have every incentive to deliver good quality service to every person in their terminals. Consequently, airports can be expected to and should ensure that the quality of signal reception over a central system will be adequate for all users. Similarly, it seems unlikely that in Continental's case there would be any unreasonable increase in cost or any unreasonable delay in obtaining access to Wi-Fi service. Thus, Massport should be allowed to operate under the central antenna option.

Finally, we believe that the operation of an airport and the concerns associated with its operation are "highly specialized and unusual," and thus warrant a waiver under 47 C.F.R. § 1.4000(d). If the central antenna option does not apply, we urge OET to grant Massport a local government waiver.

## CONCLUSION

HCAA supports the comments of ACI-NA and Massport, and urges OET to deny the Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gigi Skipper Rechel", is written over a horizontal line.

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September 28, 2005

Certificate of Service

I hereby certify that I have caused to be mailed this 28th day of September, 2005, copies of the foregoing Comments of Tampa International Airport (Hillsborough County Aviation Authority), by first-class mail, postage prepaid, to the following persons:

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